

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES M. MALARIK,

Plaintiff,

v.

BEAVER COUNTY JAIL
ADMINISTRATION, *et al*,

Defendants.

Civil Action No. 2:21-cv-194

Hon. William S. Stickman IV
Hon. Lisa Pupo Lenihan

ORDER OF COURT

Pending before the Court are the Motion for Leave to Proceed *in forma pauperis* (“IFP”) filed by James Malarik (“Plaintiff”) and United States Magistrate Judge Lisa Pupo Lenihan’s Report and Recommendation that the motion be denied pursuant to 28 U.S.C. § 1915(g). (ECF Nos. 1 & 4). Magistrate Judge Lenihan determined that Plaintiff filed at least three actions in federal court that were dismissed for failure to state a claim upon which relief may be granted. She concluded that Plaintiff cannot proceed IFP in this action pursuant to § 1915(g) because he was not in imminent danger of serious physical injury at the time he filed his Complaint. (ECF No. 4). Plaintiff was served with the Report and Recommendation and he filed timely Objections, noting that he was in imminent danger because he was kicked “in the balls” by various Butler County Jail personnel. (ECF No. 12, pp. 1-2).

After its independent *de novo* review of the record and consideration of the parties’ pleadings, the Court hereby ADOPTS Magistrate Judge Lenihan’s Report and Recommendation as its Opinion and overrules Plaintiff’s objections. The record before the Court clearly

demonstrates that Plaintiff has accumulated three strikes and he was not in imminent danger of serious physical injury.

AND NOW, this 15th day of March 2021, IT IS ORDERED that Plaintiff's Motion for Leave to Proceed IFP (ECF No. 1) is DENIED pursuant to 28 U.S.C. § 1915(g). IT IS FURTHER ORDERED that this action is DISMISSED until such time as Plaintiff pays the full \$402.00 filing fee. All pending motions – ECF Nos. 5, 6, 7, 8, 9, 10, 11 and 13 – are TERMINATED AS MOOT without prejudice to refile should Plaintiff pay the \$402.00 filing fee. The Clerk of Court is ORDERED to mark this case ADMINISTRATIVELY CLOSED.

BY THE COURT:



WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE